

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN POLANCO,	:	4:10-CV-1906
Petitioner	:	(Judge McClure)
v.	:	(Magistrate Judge Blewitt)
WILLIAM SCISM, Warden,	:	
Respondent	:	

MEMORANDUM

November 19, 2010

On September 10, 2010, John Polanco, an inmate at LSCI-Allenwood, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The case was initially referred to United States Magistrate Judge Thomas M. Blewitt.

On October 21, 2010, Magistrate Judge Blewitt filed his 10-page report and recommendation. In that report, Magistrate Judge Blewitt noted that respondent had not yet been served with petitioner's habeas petition and that the magistrate judge was giving preliminary consideration to the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (applicable to Section 2241 petitions under Rule 1(b)).

The magistrate judge indicated that he would be recommending that

petitioner's habeas petition be dismissed since this court lacks jurisdiction over his sole claim that he was "imprisoned as a result of a process which includes as it's (sic.) basis disparity and discriminatory treatment associated with crack vs. cocaine sentencing and conversion ratios." Magistrate Judge Blewitt further found that petitioner Polanco must raise his present claim via a § 2255 motion and that a § 2255 motion is the proper avenue for petitioner to assert his claim that the sentencing court improperly imposed a longer sentence on him based on his crack conviction.

Accordingly, the magistrate judge recommended that petitioner Polanco's petition for a writ of habeas corpus be dismissed for lack of jurisdiction. He found that petitioner's recourse is to file a § 2255 motion or to seek permission from the Third Circuit Court of Appeals to file a second motion under 28 U.S.C. § 2255 with respect to his sentence.

On November 15, 2010, petitioner filed objections to the magistrate judge's report and recommendation. We find petitioner's objections to be without merit as he has not shown that a § 2255 motion would be inadequate or ineffective to test the legality of his detention.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge

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O R D E R

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For the reasons set forth in the accompanying Memorandum,

IT IS ORDERED THAT:

1. Petitioner Polanco's objections to the report and recommendation of the magistrate judge (Rec. Doc. No. 10, filed November 15, 2010) are overruled.
2. The report and recommendation of United States Magistrate Judge Thomas M. Blewitt (Rec. Doc. No. 9, filed October 21, 2010) is approved and adopted in full for the reasons therein set forth .
3. The petition for writ of habeas corpus is dismissed for lack of subject matter jurisdiction, without prejudice to the petitioner's filing of a motion under 28 U.S.C. § 2255 or, if he has previously filed such a motion, to seek permission from the United States Court of Appeals for the Third Circuit to file a second or

successive motion under 28 U.S.C. § 2255 with respect to his sentence.

4. The clerk is directed to close the case file.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge